

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION**

STEVE BULLOCK, in his official
capacity as Governor of Montana;
MONTANA DEPARTMENT OF
NATURAL RESOURCES AND
CONSERVATION,

Plaintiffs,

vs.

BUREAU OF LAND
MANAGEMENT; WILLIAM
PENDLEY, in his official capacity as the
person exercising the authority of the
Director of the Bureau of Land
Management; UNITED STATES
DEPARTMENT OF THE
INTERIOR; DAVID BERNHARDT,
in his official capacity as Secretary of the
Department of the Interior,

Defendants.

Case No. 20-cv-00062

The Honorable Brian Morris,
Chief Judge

PLAINTIFFS' STATEMENT OF UNDISPUTED FACTS

1. When President Trump took office on January 20, 2017, the last Senate-confirmed Director of the Bureau of Land Management, Neil Kornze, vacated his office. President Trump did not submit a nomination to the Senate for a new Director until June 30, 2020. Instead, he chose a series of acting directors to run the agency—none of whom had been confirmed by the Senate for that position.

2. On July 29, 2019, Secretary Bernhardt issued an order “to temporarily

redelegate [the] authority” of the position of Bureau Director to William Perry Pendley. The order delegated the “functions, duties, and responsibilities of” the “Director, Bureau of Land Management” to Pendley. It “intended to ensure uninterrupted management and execution of the duties of [the Director] during the Presidential transition pending Senate-confirmation of [a] new non-career official[.]” It was set to expire on September 30, 2019. Secretary of the Interior, Order No. 3345, Amendment No. 28, <https://perma.cc/3RYQ-WFLU>.

3. On September 30, 2019, Secretary Bernhardt amended the order to provide that Pendley would continue serving as acting director until January 3, 2020.

4. On January 2, 2020, Secretary Bernhardt again amended the order to provide that Pendley would continue serving as acting director until April 3, 2020.

5. On February 6, 2020, in an op-ed for the Billings Gazette, Pendley referred to his “leadership” of the Bureau, and defended his choices and actions in that position, writing that the Bureau would “seek to respond to the needs and desires of . . . 327 million Americans.” William Perry Pendley, *Guest Opinion: BLM serves public interest in multiple use*, Billings Gazette (Feb. 6, 2020), <https://perma.cc/ER7E-Q84N>.

6. On April 3, 2020, Secretary Bernhardt amended the order yet again, continuing Pendley’s leadership until May 5, 2020.

7. On May 5, 2020, Secretary Bernhardt amended the order once again, providing for Pendley’s continued leadership until June 5, 2020.

8. On May 22, 2020, Pendley, “exercising the delegated authority of the Director, Bureau of Land Management,” signed an order designating “Successors for Presidentially-Appointed, Senate-Confirmed Positions,” and naming his own position, titled “Deputy Director, Policy and Programs,” as the first successor to the Director of the Bureau of Land Management. He delegated himself “the authority to perform all duties and responsibilities of the Director . . . to perform essential functions and activities of the office.” No expiration date appears on the face of this succession order. Pendley’s succession order permits unconfirmed individuals, including Pendley himself, to exercise the authority of the Director “when the nature of the situation requires immediate action” and imposes no other limit on the exercise of that authority.

9. On June 5, 2020, the Interior Department made a statement to the press announcing that Pendley would be continuing in his role as acting director based on updated succession orders. *See BLM acting director stays at post despite lawsuit*, The Salt Lake Tribune (June 9, 2020), <https://bit.ly/32aIYVT>. No expiration date applies to Pendley’s purported authority.

10. On June 30, 2020, the President submitted Pendley’s nomination for the position of Director of the Bureau of Land Management to the U.S. Senate.

11. Pendley’s nomination was pending in the Senate until on or about August 15, 2020, when President Trump withdrew Pendley’s nomination. *See, e.g.,*

Steven Mufson, *White House withdraws nomination of William Pendley to head the Bureau of Land Management*, Wash. Post (Aug. 15, 2020), <https://perma.cc/V6K7-YLDW>.

12. There was significant opposition to Pendley's nomination. *See, e.g., Schumer, Heinrich, Manchin lead entire Democratic caucus in opposing Bureau of Land Management Director nominee William Perry Pendley*, Senate Democrats (Aug. 11, 2020), <https://perma.cc/63DA-Z744>; Kirk Siegler, *Trump to withdraw polarizing nominee to lead Bureau of Land Management*, Nat'l Pub. Radio (Aug. 15, 2020), <https://perma.cc/2CNW-ZPFX>; Gene Johnson, *Trump to withdraw controversial nomination for public lands chief*, USA Today (Aug. 15, 2020), <https://perma.cc/V3YT-ZLJU>.

13. In July 2020, the Bureau of Land Management announced that it had completed the process for approving Resource Management Plans for the Lewistown and Missoula Field Offices, and that the Bureau had approved the plans over Governor Bullock's repeated objections on behalf of the State of Montana. *See* letters from Governor Bullock, dated August 15, 2019 and April 13, 2020, conveying the State's concerns that, "at the very end of the planning process," "the BLM's Washington DC review" "eliminate[d] conservation protections." "In letters accompanying the Record of Decision and Approved Resource Management Plans, dated "July, 2020," the Bureau explained that "[t]he BLM received 150 protest letters" for the Lewistown Plan and "72 protest letters" for the Missoula Plan; that

“the BLM Director reviewed all protest issues for the proposed planning decisions”; that “[t]he Director concluded that the BLM Montana State Director followed the applicable laws, regulations, and policies, and considered all relevant resource information and public input”; and that “[t]he BLM Director denied the protests, and that decision is the final decision of the US Department of the Interior.” Pendley performed these functions and duties of the Director of the Bureau.

14. The Director of the Bureau of Land Management prepared a Summary Protest Resolution Report, dated June 9, 2020, for the Lewistown Resource Management Plan. This report was prepared at Pendley’s direction.

15. On August 4, 2020, the Bureau published notices of the Record of Decision and Approved Resource Management Plans in the Federal Register. *See* 85 Fed. Reg. 47238 (Aug. 4, 2020); 85 Fed. Reg. 47239 (Aug. 4, 2020). The notices explained that “[a]ll protests have been resolved and/or dismissed by the BLM Director.” 85 Fed. Reg. 47239. Pendley performed this task of the Director.

16. On August 4, 2020, the White House listed Pendley’s official title as “Acting Director of Bureau of Land Management” in a pool report. *See* Pool Reports, *Subject: In-town pool report no. 3*, Aug. 4, 2020, <https://perma.cc/SUX8-KYHY>. In addition to describing Pendley as exercising the authority of the director, the Bureau has repeatedly identified him as the acting director in its official Twitter account. *See* Twitter, Bureau of Land Management Fire and Aviation (August 14, 2020)

<https://bit.ly/2QagXI0>. Twitter, Bureau of Land Management Fire and Aviation (August 15, 2020) <https://bit.ly/3iThDyd>.

17. Pendley wrote an op-ed published on July 31, 2020, defending “the approval of BLM’s final Resource Management Plans (RMPs) for the Lewistown and Missoula areas . . . covering a combined total of 814,200 surface acres.” William Perry Pendley, *Guest Column: Trump Administration establishes backcountry conservation areas in Montana*, Missoulain, July 30, 2020, <https://perma.cc/TW47-E92C>.

18. On August 18, 2020, the Department of the Interior confirmed to press that Pendley will continue to “lead the Bureau of Land Management.” Perrin Stein, *Pendley BLM nomination pulled; groups continue push for removal*, Bozeman Daily Chronicle (Aug. 18, 2020), <https://perma.cc/5UUP-BJUP>.

19. While to the press the White House described Pendley’s position as “lower-level,” during Pendley’s entire tenure at the Bureau of Land Management there has been no officer superior to him within the Bureau. Steven Mufson, *White House withdraws nomination of William Pendley to head the Bureau of Land Management*, Wash. Post (Aug. 15, 2020), <https://perma.cc/V6K7-YLDW>.